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No. 734

In the Supreme Court of the United States

OCTOBER TERM, 1936

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

THE AMERICAN SHEET & TIN PLATE COMPANY ET AL., APPELLEES

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REPLY BRIEF ON BEHALF OF THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

APRIL 1937.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REPLY BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

THE RAILROADS' BRIEF, AMICI CURIAE

The brief of the railroads, filed as *amici curiae*, states that the signatory railroads "are greatly interested in the questions presented in the cases at bar, and urge the affirmance of the decrees of the lower court." While consenting to the filing of the brief, the Government and the Commission believe that the Court's attention should be directed to the nature of the "interest" which the railroads, signing the brief, have in these appeals:

First. The orders in five of these cases are directed solely to the Pennsylvania Railroad Company, and in the sixth case the order is directed to the Missouri Pacific Railroad Company and the St. Louis-San Francisco Railway Company. Of the thirty-two railroads joining in the brief, only one—the Pennsylvania—serves the plants affected by the orders, and though that railroad had an opportunity, as a party defendant below, to express its views, it filed no answer to the petitions, took no part in the proceedings below, and, indeed, obtained a dismissal as to it upon "a stipulation disposing of the matters herein at issue between" it and the several petitioners below. (R. 187–189.) The two railroads named as defendants in No. 3136 (R. 120) filed no answer, took no part in the case, were severed on appeal (R. 584), and do not join in the railroads' brief in this Court.

Second: As this Court has often said, the changes made in the Interstate Commerce Act by Transpor-

tation Act, 1920, constituted a new departure in railroad regulation, which theretofore had been principally confined to the prevention of injustice caused by unreasonable or discriminatory rates or practices. There was, of course, no change made in the Act's principal purpose, which, from the beginning had been (and still remains) "to cut up by the roots every form of discrimination, favoritism and inequality." *L. & N. R. Co.* v. *Mottley*, 219 U. S. 467, 478. But the 1920 Act sought also to ensure an adequate and efficient national transportation service. This was to be accomplished in part by direct instructions to the Commission to fix rates that would "as nearly as may be" yield adequate revenue and a fair return to the carriers. (Sec. 15a (2).) However, the desired result of an efficient, national transportation service at rates, both just to carriers and reasonable to shippers, could not be obtained simply by raising rates and, accordingly, the new regulatory policy was in large measure directed to the prevention of waste, principally waste of a kind growing out of the carriers' competition with each other. *R. R. Comm.* v. *So. Pac. Co.*, 264 U. S. 331, 347; *Transit Commission* v. *U. S.*, 289 U. S. 121, 127, 128; *New England Divisions Case*, 261 U. S. 184, 190. In *Texas* v. *United States*, 292 U. S. 522, 530, 531, it is emphasized that the provisions of Emergency Railroad Act, 1933,

> Confirm and carry forward the purpose which led to the enactment of Transporta-

> tion Act, 1920. * * * It is a primary aim of that policy to secure the avoidance of waste. That avoidance, as well as the maintenance of service, is viewed as a direct concern of the public. *Davis* v. *Farmers Co-operative Co.*, 262 U. S. 312, 317; *Texas & Pacific Ry. Co.* v. *Gulf, C. & S. F. Ry. Co.*, 270 U. S. 266, 277. * * *

The general rate increases which the Commission has authorized in carrying out its duty to maintain an efficient transportation service are well known. *Increased Rates, 1920*, 58 I. C. C. 220 (increases ranging from 25 to 40 p. c.); *Reduced Rates, 1922*, 68 I. C. C. 676 (partial reduction of about 10 p. c.); *Ex Parte 103, Fifteen Per Cent Case*, 178 I. C. C. 539 (temporary increase on many selected commodities); *Emergency Freight Charges, 1935*, 208 I. C. C. 4 (emergency increase for temporary period ending June 30, 1936, and subsequently extended to December 31, 1936, 215 I. C. C. 439). There is now pending before the Commission a general application for increases to be embodied in many of the basic rates. Ex Parte 115, *In the Matter of Increases in Freight Rates*, 219 I. C. C. 565, 566.

The Commission's investigation in Ex Parte 104 into practices adversely affecting operating revenues is in the nature of a companion case to the *Fifteen Per Cent Case, supra*, and is there referred to (pp. 585, 586).

In the proceeding involved in these appeals, Part II of the above-mentioned investigation in Ex

Parte 104, the principal practices investigated related to the spotting of cars within industrial plants, that is, the work, at times done by railroad locomotives but more often by plant locomotives, of making the plant spotting movements between interchange, or hold, tracks, and various desired unloading or loading points within the plants. Under the conditions described by the Commission in these cases such work is unmistakably no part of the railroads' work under the rates. What the Commission condemns in these cases is payments made by the railroads of money to appellee industries for doing their own work. The general run of shippers enjoy no such "shrinking" of the rates they must pay, but, on the contrary, have been asked to bear the load of general increases while such refunds from the rates were being continued to many particular industries.

Misapprehension of appellees and the railroads concerning the effect of the orders

Both the appellees and the railroads apprehend that in issuing these orders the Commission has undertaken to "revolutionize" rate-making by requiring railroads to assess a separate charge in addition to the line-haul rates for any switching service performed by them in connection with the receipt and delivery of carload freight. No such situation is presented by these cases and no such result will follow a decision sustaining the orders. The Commission does not dispute that plant spotting of cars generally may be performed or paid

for by carriers as part of the receipt or delivery of cars under the line-haul rates. Its general report states (R. 16) "there must be such a delivery as is customary and reasonable", and makes it plain that at any plant at which the carriers are reasonably free to perform the spotting service at their reasonable convenience, they are obligated to deliver and receive cars at loading and unloading points within the plant. That this is the Commission's attitude is further demonstrated by one of its supplemental reports in this proceeding, *Pacolet Manufacturing Company, Operating Allowance*, 210 I. C. C. 475, in which it found, upon the facts, that the service performed by that company for the Southern Railway "is a service of transportation for which the Southern may lawfully pay an allowance in accordance with Section 15 (13) of the Act." Moreover, the Commission's main report states (R. 15) that in the majority of instances "the spotting is performed by the carrier at its convenience and without interruption or interference by the industry."

The holding of the lower court and admission of appellees that "special" or "extraordinary" conditions will relieve carriers of their obligation to "spot" cars in a particular plant destroys appellees' contention as to an absolute obligation arising from "custom and usage." The only substantial question left is whether the evidence is sufficient to support the orders

In the court below appellees' reasoning seemed to be that as the obligation of railroads under the line-haul rates ordinarily includes the placement of

cars for loading or unloading on industrial tracks, it necessarily follows that it is the railroads' absolute duty to perform or pay for the particular spotting services at the plants of appellees. But the court below rejected the view that the obligation is unlimited, and held (R. 534) that it "will not include special or particular 'spotting service'."

And now appellees recede from this assertion of the railroads' absolute duty, and admit in their brief (p. 9) that "certain extraordinary circumstances, not present in these cases, may relieve or limit this obligation." At page 30, the brief sets forth typical circumstances which they say will relieve the railroads of the asserted obligation.

It results that the only substantial question before the Court is whether the evidence is sufficient to justify the Commission's conclusion in each case that the conditions and operations within the plant are such as to terminate the carriers' transportation obligation under the rates at the interchange tracks, or, in other words, that the conditions under which the service is performed at each plant are not "customary and reasonable" or "ordinary". This is apparently the basis of the lower court's decision, although it ultimately held that the Commission's orders were "beyond its statutory power" for, after holding that spotting service is included in the carriers' legal obligation under the line-haul rates, the court qualified by saying (R. 534): "But this will not include special or particular 'spotting service' ", and then held (R.

535): "In the instant cases we find no circumstances which would relieve the carriers involved from the duty of 'spotting' the cars as part of the transportation imposed upon them by law." In discussing the language just quoted from the decision below, the three-judge court for the Northern District of Indiana said: "We think that statement is tantamount to saying that the Commission's factual conclusion to the contrary was not supported by substantial evidence", *Elgin, Joilet & Eastern Railway Co.* v. *United States*, and *East Chicago Dock Terminal Co.* v. *United States*, (decided January 23, 1937) (not yet reported [1]). In those cases the Commission's order was identical to the order in the cases at bar. We commend to this Court the reasoning of the court in those cases. That the question is one of the sufficiency of evidence is also plain from the decision of the three-judge court for the District of Minnesota in *Koppers Co.* v. *United States et al.* (printed as Appendix D to this brief) sustaining (Judge Sanborn dissenting) another similar order of the Com-

[1] The opinion is printed as Appendix A to this brief. The court's decision in those cases was on final hearing but no decree has yet been entered because the court has granted plaintiffs' request to consider an additional brief by plaintiffs "on new points and authorities". See also findings of fact and conclusions of law entered in December, 1936, (printed as Appendices B and C hereto) by the three-judge court for the Eastern District of Wisconsin in *Goodman Lumber Co.* v. *United States* and *A. O. Smith Corps.* v. *United States*, sustaining, without opinion, orders of the Commission identical to those in the instant cases.

mission. That Court also held that "carriers, to perform the full measure of their duty under line-haul rates, are not required to stand ready with a switch engine at all times to answer the call of an industry to spot cars within its plant", and further that the evidence in the proceeding before the Commission established "decidedly to the contrary" such universally established custom and practice as appellees here claim.

Arguments of appellees and the railroads are not based upon facts of record

The brief of neither the appellees nor the railroads submit any analysis or discussion of the evidence disclosing the particular conditions at appellees' plants. One topic of appellees' brief (p. 30) states "the extraordinary circumstances which will relieve the carriers of this duty are not here present." But there is no discussion under that topic of the evidence upon which these orders rest. At pages 56–57 appellees touch upon the evidence and there again they refrain from pointing to the particular circumstances and conditions of operation which, it would seem, that they contend render the spotting service at their particular plants "customary and reasonable" or *not* unusual and extraordinary.

Appellees cite (pp. 20–24) the testimony of several witnesses, including Witness Eyemans, a vice-president of the Pennsylvania Railroad. But the testimony cited refers merely to the claimed gen-

eral "custom and practice" of carriers of including spotting in the service performed under the line-haul rates. None of the witnesses discussed the conditions at appellees' plants. Nor does the brief of the railroads discuss the *facts* of record disclosing the circumstances and conditions under which the service is performed at appellees' plants. They assert (p. 7) that "there is no such interruption or interference" as to warrant the Commission in "condemning" the spotting service at appellees' plants, but their argument following this assertion is addressed generally to the subject of what might properly be regarded as sufficient interruption or interference to relieve the carrier of the service, and ends with the mere conclusion that the conditions at these plants do not constitute such interruptions or interferences. They do refer (p. 8) to the testimony of one of the appellees that in the "judgment" of the witness the railroad could perform the service without interfering with plant operations. But the same witness also made it clear that the service could not be performed at the railroads' own convenience but only at hours which have to be designated by the industry" (R. 216). They also refer (p. 9) to testimony of American Sheet and Tin Plate Company, but that witness said that if the Pennsylvania undertook to perform the service it "would be required to place the cars after their arrival at Vandergrift *as needed*", and "that could be arranged to conform to *our needs*."

Reference is also made (p. 13) to testimony of West Leechburg Steel Company stating that "there is nothing unusual in the operation of this plant. The demands of this company are not unreasonable as compared with other steel industries." This not only is a mere conclusion of the witness but the use made of it would also exclude from consideration by the Commission the physical facts showing the conditions of operation within the plant and compel it to accept the witness's conclusion. Moreover, the same witness had just previously said that efforts of the Pennsylvania to perform the service had terminated because it "couldn't perform the service when they needed it", and that "to spot the plant in a satisfactory manner it would be necessary to assign a locomotive to this plant all the time to place the cars at the time they were needed."

The evidence showing conditions at the plant of each appellee must be considered as a whole in testing its sufficiency to support the Commission's orders, and not in mere fragments or sentences disconnected from their context.

The Government's main brief (pp. 73–117) contains a fair and reasonably complete summary of the facts of record concerning the spotting service and the conditions under which it is performed at the plant of each appellee.

COURT DECISIONS

Court decisions are cited by appellees and the railroads in support of their view that because ordinary spotting of cars on private tracks is generally included in the line-haul rates, the particular spotting services at appellees' plants is necessarily so included. None of the cases cited undertakes to lay down any general rule of law as to what constitutes abnormal, extraordinary, or usual spotting service.

The *Los Angeles Switching Case*, 234 U. S. 294, which they cite (p. 9) as laying down a rule in this Court that delivery "embraces the performance of spotting service within an industrial plant" makes it clear (p. 307) that the spur tracks there under consideration were to be "distinguished from mere plant facilities such as were under consideration in *Chicago & Alton Ry. Co.* v. *United States*, 156 Fed. Rep. 558, and in the case of the *General Electric Company and Solvay Process Company*, 14 I. C. C. 237, 246", and points out, at page 310, that the Commission itself distinguished the delivery on those spur tracks from—

> Cases of * * * deliveries through a system of interior switching tracks constructed as plant facilities, were expressly distinguished by the Commission in 18 I. C. C., pp. 313, 314; and it is apparent that the ruling of the Commission would not apply in any case where by reason of the location and extent of the spur tracks and

> the character of the movement the facts were essentially different from those upon which the decision was based.

The decision of this Court in *United States* v. *Union Stock Yard*, 226 U. S. 286, cited by appellees (p. 10) and the railroads (p. 20) is not in point. The question there was whether the Union Stock Yard and Transit Company was, itself, a common carrier subject to the Interstate Commerce Act, and this Court held that it was. The case did not involve the spotting of cars by a shipper within its private plant after delivery of them by a railroad upon interchange tracks at the plant door. Instead, the service there under consideration was the movement of cars by the common carrier, the Stock Yard Company, from the junction of its tracks and those of the trunk lines to unloading pens within the yards. Moreover, both that decision and the later decision of this Court in *Adams* v. *Mills*, 286 U. S. 397, 409, hold "that the yards are, in effect, terminals of the railroads * * *. They are in fact used as terminals; and necessarily so." And the latter decision makes it plain that whether a particular service is a transportation service cannot be decided, as the railroads and appellees attempt now to do, upon general conclusions and opinions of witnesses or upon conditions at other plants, but must be decided upon the facts at the particular terminal or plant in question. The opinion reads (pp. 409–410):

> Whether the unloading in the yards was a part of transportation was not a pure question of law to be determined by merely reading the tariffs. Compare *Great Northern Ry. Co.* v. *Merchants Elevator Co.*, 259 U. S. 285, 294. The decision of the question was dependent upon the determination of certain facts, including the history of the Stock Yards and their relation to the line-haul carriers; the history of the unloading charge at these yards; and the action of the parties in relation thereto. If there was evidence to sustain the Commission's findings on these matters, its conclusion that the collection of the extra charge from the shippers was an unreasonable and unlawful practice must be sustained. *Atchison, T. & S. F. Ry. Co.* v. *United States*, 232 U. S. 199, 221; *Los Angeles Switching Case*, 234 U. S. 294, 310, 311.

The more recent decision of this Court in *Atchison, T. & S. F. R. R. Co.* v. *United States*, 295 U. S. 193, which involved delivery at that stockyard, is to the same effect.

Finally, the peculiar conditions affecting the transportation of livestock, as distinguished from ordinary "dead" freight, caused Congress to enact as the statutory obligation of carriers the duty of loading and unloading shipments of livestock and providing pens for that service (Interstate Commerce Act, Section 15 (5)), following this Court's decision in *Covington Stock-Yards Co.* v. *Keith*, 139 U. S. 128, 136, which is cited at page 304 of its

decision in *United States* v. *Union Stock Yard, supra.*

It is plain that no rigid rule of law has been or could be laid down as to what constitutes reasonable delivery at every industry. As stated by the Vice President of the Pennsylvania Railroad (R. 457): "Each and every case * * * has got to be considered on its merits * * *."

PRIOR DECISIONS OF THE COMMISSION

Appellees contend that previous decisions of the Commission foreclosed its findings against these appellees. After citing several of its reports, they state (p. 19): "In reliance upon this chain of decisions of the Commission, industries were built and developed." The railroads say (p. 33) that by its decisions the Commission has "tacitly recognized" that the duty of carriers under the line-haul rates does not end on interchange tracks at private plants but includes "a spotting service." The first decision relied upon was rendered by the Commission on July 6, 1915, *Car Spotting Charges*, 34 I. C. C. 609.

To these assertions there are at least three answers:

First. The plants of these appellees were not "built and developed" in reliance upon Commission decisions concerning car spotting, for the Vandergrift plant of American Sheet & Tin Plate Company was in operation more than 30 years

ago—before the Commission decided any of the cases cited (R. 49), and performed its own spotting without allowance until 1917; the Allegheny Steel Company was in operation 29 years and performed its own spotting without allowance until 1930 (R. 202, 67); Pittsburgh Plate Glass Company (Ford City plant) was operating in 1903, and performed its own spotting with allowance until 1927 (R. 85); Weirton Steel Company was operating in 1909, and performed a part of its own spotting until 1921 (R. 209); West Leechburg Steel Company performed its own service without allowance until 1927 (R. 206), but the record does not show when the plant was built; Pittsburgh Plate Glass Company's Crystal City plant was built and operating in 1908 (R. 130).

Second. (a) The contention that the Commission's decisions have built up an inflexible rule of law to the effect that line-haul rates of carriers include the particular spotting services at appellees' plants or at all industrial plants is plainly inconsistent with the concession of appellees, the railroads, and the court below that the rates do not include "special or particular" or extraordinary spotting service.

(b) The Commission's decisions relied upon have been misconstrued by appellees and the railroad. While its decisions recognize the duty of carriers to perform "customary and reasonable" spotting service, they do not hold that the duty in-

cludes all spotting under all conditions. Indeed, they hold the contrary. Its general report in these proceedings analyzes and discusses the same case cited here, and concludes (R. 27):

> Certainly, it cannot be said that we have found that the transportation service which a carrier is obligated to perform under a line haul rate includes the placement of the car at the point of loading or unloading in all instances and under all conditions.

As stated, appellees and the railroads rely principally upon the report in *Car Spotting Charges, supra.* While the report in that case, as does the general report in this proceeding, recognizes that "customary and reasonable" delivery includes car spotting within the plants under normal and reasonable conditions, it does no more than that.

The suspended tariff proposing the spotting charges under consideration in that case "listed" in three classes the industries to which the charges were to apply, and one of the Commission's reasons for rejecting the tariff was (p. 615) that "the industries were arbitrarily selected." Moreover, the report declares (p. 618) that: "The line-haul rate, however, covers *only one placement of the car* for loading or unloading.

Appellees also cite (pp. 18–19) the decision in *National Malleable Castings Co.* v. *P. & L. E. R. R. Co.*, 51 I. C. C. 537, in which the Commission found that the complainant was entitled to allowance for doing its own spotting, and referred to several

other cases in which it had "fixed reasonable allowances" for similar switching. But the report does not hold that allowances are due for all spotting under any conditions. It is decided upon "the nature of the industry" as disclosed by the particular facts at that plant. It was decided (1918) *after* the decision in *Car Spotting Charges, supra*, (1915), and it proves that the Commission's views in that case were the same as those expressed and applied in its general and supplemental reports in the instant cases. Indeed, the decision points out the difference between the facts upon which that allowance was held (November 26, 1918) to be justified and those upon which the Commission had, five months before, denied allowances to National Tube Company in *The Lake Terminal Case*, 50 I. C. C. 489 (June 11, 1918). The latter case is especially pertinent here: The report contains a sketch or map (opposite p. 490) disclosing a plant and general track arrangement not dissimilar to those portrayed by the maps of appellees' plants (see specially bound volume of exhibits); and, upon a lengthy discussion of "custom and practice", the Commission concluded (p. 496):

> It has not been the custom of carriers to spot cars without charge within industrial plants, as that term is here used, or to make allowances therefor out of their line-haul rates when the spotting is done by the industries themselves.

In this connection the Commission's decisions in *Pittsburgh Plate Glass Co.* v. *Director General*, 58

I. C. C. 81, and *Allegheny Steel Co.* v. *Director General*, 60 I. C. C. 575, are cited. But the report in the first case demonstrates the opposite of an inflexible rule of law or "custom and practice" concerning particular service at an individual plant. It states (p. 82) that prior to 1903 the Pennsylvania Railroad performed the switching "but the service became unsatisfactory and was a hindrance to the plant, and the complainant took it over with its own power." Thereafter, the service was performed (at least until the time the complaint was filed in 1920) by the Pittsburgh Plate Glass Company without compensation. In the second case the report and the record here show that for twenty-nine years the Allegheny Steel Company performed the spotting service without an allowance. Appellees and the railroads further suggest that because the Commission found unjust discrimination and issued alternative orders requiring its elimination in those cases, it may not now hold upon the facts of this record that it is unlawful for the railroads either to furnish the particular service or pay for it at those plants. This view is entirely erroneous, as shown by numerous decisions of this Court. *Warehouse Co.* v. *United States*, 283 U. S. 501; *Terminal Warehouse Co.* v. *P. R. R.*, 297 U. S. 500.

There is nothing in the language of any of the cases cited by appellees (pp. 17–18) and by the railroads (pp. 30–33), in which the Commission prescribed rates on various commodities, to support their contention that the spotting services in the

instant cases were included in the rates prescribed in those cases. Appellees and the railroads assume that, because the reports do not expressly state the contrary, every manner of spotting service was included in those rates. As the reports are silent on the subject, the only justifiable assumption is that "customary and reasonable" delivery was intended, and not more. Moreover, this argument of appellees goes to the "volume" of the rates. Even assuming that the volume thereof is excessive, that would not establish that spotting of the kind involved at these plants was included in the published rates.

Appellees (p. 20) and the railroads (pp. 6–7) contend that the Commission's recent refusal to prevent railroads from engaging in so-called "store-door" or "pick-up and delivery service" in connection with the transportation of less-than-carload freight (*Pick-Up and Delivery Service in Official Territory*, 218 I. C. C. 441), is inconsistent with its action in these cases. Even if the claimed inconsistency existed it would not nullify the orders in these cases. *Virginian Ry. Co.* v. *United States*, 272 U. S. 658. But, the two types of service are wholly different and neither one furnishes a legal basis for the other. In that case, however, instead of selecting, as in these cases, a few large shippers from the general public and publishing tariff exceptions favoring them, the carriers there published general tariffs by which the pick-up and delivery service is open and available to all shippers.

Compare *Merchants Warehouse Co.* v. *United States*, 283 U. S. 501, 510–512. Also, the Commission's authorization to the carriers to file the tariffs in that case was conditioned by the requirement that existing minimum rates of 30¢ per 100 pounds previously prescribed by it for less than carload traffic be increased to 45¢ per 100 pounds. Finally, the "store-door" delivery service is done in ordinary course of carrier operations, and does not include further separate and additional placements, subject to the convenience and direction of the shippers, within the *interiors* of stores and warehouses *after* the shipments have been *delivered* at the doors.

Appellees' brief cites (pp. 20–24) the testimony of 18 witnesses as proof of the claimed rule of law, or "custom and practice" of including spotting service in the line-haul rates "east of the Mississippi and north of the Ohio and Potomac", and the railroads cite only one (p. 31). But, as shown by the testimony quoted from Witnesses Eysman and Bihler (pp. 22–24), the testimony of all of the witnesses cited consists entirely of *general* statements and expressions of their *views, opinions,* and *understanding;* none of them discussed the *facts* upon which the orders in these cases rest; and, indeed, none of them dealt with any facts at all. And, while all of them stated it to be their "views" and "understanding" that the railroads were obligated under the line-haul rates to place the cars "in position" for loading or unloading, none of

them disagreed with the conclusion reached by the Commission that, in cases of obstruction, interruption, interference, or other such circumstances, the obligation ends at the point where such condition is encountered. That witness was chairman of a committee of railroads in official territory [2] which sought unsuccessfully in 1920 to promulgate uniform rules and practices with respect to spotting service. (Gov't. Br., pp. 39–41). And, on the Pennsylvania Railroad, of which the witness is an officer, there are 125 industries which perform their own spotting service without allowances, and 59 which receive allowances. (Gov't. Br., p. 37.)

Witness Beyers' testimony is cited, but on the Chicago & North Western Railway, of which he was vice president, there are 36 industries which perform their own spotting; of these, seven are paid allowances and 29 are not (see Gov't. Br., p. 39). That there is no such universal rule of law or "custom and practice" appears from the admitted fact stated in the Commission's report that spotting service in New England, the Southeast and extreme Southwest is not performed or paid for by the carriers.

The railroads take exception to the statement in the Commission's general report (R. 43) that generally the payment of allowances for services performed beyond points of interruption or interference within plants not only violates Section 6 of

[2] North of the Ohio and Potomac Rivers and east of the Mississippi River.

the Act but also "dissipates respondents' funds and revenues, is not in conformity with efficient or economical management as contemplated by the Interstate Commerce Act, and not in the public interest." In its reports in these cases, the Commission found upon unquestioned evidence that the allowances to appellees constituted refunds from the rates in violation of section 6, and it follows as of course that such refunds are contrary to "efficient and economical management" and to the public interest. The railroads' argument against this general conclusion of the Commission leads to this: That they may "shrink" their rates in favor of particular shippers down to the point where the business of such shippers is unprofitable. And, apparently, that this must be established by the evidence.

CONCLUSION

The decrees of the District Court should be reversed.

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